

Fiscal Impact Analysis of Proposed Rules

Agency Proposing Rule Change

North Carolina Department of Health and Human Services (DHHS) Division of Health Benefits (DHB)

Contact Persons

Shazia Keller , Policy Analyst and Rules Coordinator – DHB (919) 855-4019

Lori Anne Caskey, Appeals Chief – DHB (919) 855-3261

Impact Summary

Participant:	Yes
Federal Government:	No
State Government:	Yes
Local Government:	No
Small Business:	Yes
Substantial Impact:	No

Title of New Rule and Citations

10A NCAC 21A – General Administration

Section .0304 – Conducting Departmental Appeal Hearings by Telephone or Electronic Means

The proposed rule text is attached.

Authorizing Statutes

G.S. 108A-54

G.S. 108A-79

G.S. 108A-80

42 CFR 431.205

42 CFR 431.240

42 CFR 431.242

Summary of Rule

10A NCAC 21A .0304 will establish authority to permit State hearing officers to attend public assistance and social services appeals via telephone or electronic means to make appeals heard under G.S. 108A-79(i) more efficient.

Background

A similar version of this rule was adopted via emergency and temporary rulemaking in response to the COVID-19 public health emergency. The rule worked smoothly, enabled the State to maintain case expeditious disposition so that appellants received timely decision on their appeals. There have been no complaints related to access to case files or other aspects of the change in how State level appeals have been conducted due to the public health emergency. DHB seeks approval of a permanent rule to authorize State hearing officers to attend hearings remotely.

General Impact Discussion

This permanent rule will reduce State staff time spent on travel to DSS offices to hear appeals in person and the associated travel expenses. The time saved can be better used to hear more cases or perform tasks associated with the case such as review of the case file, writing decisions, logging and tracking cases, monitoring appeal trends to identify the need for additional training or policy clarification and other work activities.

This rule, if enacted, will have only a slight impact on appellants because they will continue to attend appeal hearings at their DSS office and review their case file there unless an emergency causes the office to be closed to the public. In the event of an emergency closure, appellants would enjoy a minor but unknown saving of travel time. The savings is difficult to quantify due to varying drive times resulting from distance, local traffic conditions and whether travel occurs during rush hour. Also, local government, that helps fund county department of social services activities, will have a minor impact in the form of copying and mailing case files or delivering by encrypted e-mail if the DSS office had to close to the public.

In terms of appeal outcomes, there is a possibility that appellants may perceive decisions could be made differently and to their detriment without the face to face, human interaction between appellants and hearing officers during in person hearings. The likelihood is small as hearing officers are obligated to make decisions solely on evidence presented and the applicable law. DHB's research shows that courts in other jurisdictions have found that lack of visual contact between appellants and hearing officers during an appeal hearing does not violate due process principles.¹

Fiscal Impact Analysis

DHB estimates there were 4,417 Medicaid appeals in 2019 for cases that would have been covered by this rule.

DHB conducted an analysis of State hearing officer salary 2019 to approximate the money saved for each hour of their travel time. Each hour is valued at \$31.22. This figure is based on a staff of twelve full time hearing officers and four substitute officers who are employed on a part time basis. The time spent travelling in 2019 was about 4720 hours. The aggregate salary of the full-time State hearing officers was \$719,400.

$$\begin{aligned} \$719,400 \div 12 &= \$59,950 \text{ average annual income per State hearing officer} \\ \$59,950 \div 12 \text{ months} &= \$4995.83 \text{ average monthly income per hearing officer} \\ \$4995.83 \div 160 \text{ hours worked per month} &= \$31.22 \text{ value of one hour of travel time.} \\ \$31.22 \times 4720 \text{ hours} &= \$147,358.00 \end{aligned}$$

¹ Casey v O'Bannon, 536 F. Supp. 350 (1982); Murphy v. Terrell, 938 N.E. 2d 823 (2010); Gaige M. v. Winterer, 862 N.W. 2d 76 (2015).

Based on the data and calculations above, the State can estimate \$147,358.00 savings in working time spent on travel each year this rule is effective.

The State hearing officers mostly used State vehicles for travel to hearings in 2019. The mileage for each trip varied based on how far the hearing officer traveled from their home and whether hearings were assigned in more than one county on a given day.

A review of available data on 2019 vehicle costs shows \$43,359.32 was spent on motor fleet costs and gasoline expenditures for State hearing officer travel.² Additionally, State hearing officers were reimbursed \$35,328.98 in travel costs by the State. This figure includes expenses for food, lodging and reimbursements for use of personal vehicles. Together, motor fleet and subsistence expenditures were \$78,688 in 2019.

Based on the data and calculations above, the State can estimate there will be \$226,046.00 in total travel related savings each year this rule is effective.

Businesses in North Carolina that meet the needs of travelers such as restaurants and hotels will be impacted by the reduced State expenditures enumerated above. The impact on the lodging industry is minor because it enjoyed revenues topping \$4.0 billion in 2019 according to Visit North Carolina.³ The impact on restaurants is even smaller because the State's restaurant industry had \$21.4 billion in sales in 2018 based on the most recent research performed by the National Restaurant Association.⁴

Conclusion

The proposed rule change would allow state hearing officers to attend public assistance and social services appeals via telephone or electronic means in order to reduce staff travel time and expenses.

The impact on beneficiaries is expected to be minor although there is a possibility that appellants may perceive decisions could be made differently and to their detriment without the face to face, human interaction between appellants and hearing officers during in person hearing. Hearing officers are obligated to make decisions solely on evidence presented and the applicable law.

This rule will have a positive fiscal impact for the State in terms of avoided travel expenditures for State hearing officers of approximately \$78,700 annually. In addition the State and beneficiaries will enjoy the non-financial benefits of hearing officers no longer spending portions of their workday on travel, amounting to 4,720 hours or \$147,400 dollars in staff time that can be redirected toward casework activities. State hospitality businesses will lose

² Due to inconsistencies in the available data, it is estimated that this figure could be between 10-15% higher.

³ <https://partners.visitnc.com/contents/sdownload/71793/file/2019-Year-End-Lodging-Report.pdf>. Accessed February 10, 2021.

⁴ <https://www.restaurant.org/downloads/pdfs/state-statistics/northcarolina.pdf> . Accessed February 10, 2021.

revenues of \$35,300 annually but this reduction in State travel expenditures represents an infinitesimal proportion of annual revenue for the sector.

Appendix 1 – Proposed Rule

10A NCAC 21A .0304 CONDUCTING DEPARTMENT APPEAL HEARINGS BY TELEPHONE OR ELECTRONIC MEANS

For public assistance and social services de novo appeals, including appeals of cases involving disability filed pursuant to G.S. 108A-79(i):

- (a) The Department shall conduct the appeal hearing by telephone or other electronic means with the parties attending at the county department of social services with jurisdiction over the case.
- (b) The Department shall notify the appellant of the hearing by First Class U.S. Mail.
- (c) In the case of an emergency that causes a county department of social services to be closed to the public, the parties shall attend by telephone or other electronic means. The county department of social services shall make available by electronic mail, U.S. Mail, or physical pick up the case file materials the appellant is entitled to examine pursuant to G.S. 108A-79(i)(1).
- (d) The Department shall continue such appeal hearings as necessary to fulfill procedural rights of the appellant as defined by 42 C.F.R. 431.242, which is incorporated by reference including subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov>.

History note: Authority G.S. 108A-54;108A-79; 108A-80(d); 42 C.F.R. 431.205; 42 C.F.R. 431.240; 42 C.F.R. 431.242.

Emergency Adoption Eff. May 4, 2020.

Temporary Adoption Eff. June 26, 2020.